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No. 05-502

Supreme Court, U.S.
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In The
Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Utah

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONSE TO PETITIONER'S STATEMENT OF FACTS

For purposes of this appeal, the Respondents Charles Stuart and Sandra Taylor adopt the factual allegations as outlined and adopted by the Utah Supreme Court in this matter.

SUMMARY OF ARGUMENT

This matter has come before the Court on a Petition for Writ of Certiorari based on an alleged misapplication by three different Utah state courts in their application of the Fourth Amendment to the United States Constitution. However there is no misapplication of this Amendment, there is no significant controversy so as to warrant this matter being heard, and there is ample legal support for the three different Utah courts in their decision denying the application of the emergency aid exception to the Fourth Amendment as sought by the State in this matter.

ARGUMENT

I. A large majority of cases support the fact that there is an objective standard that must be applied by police officers in making an emergency aid intrusion into a home

It is a firmly entrenched legal principle that a person is protected from unreasonable searches of their home and person, and that warrantless searches are *per se* unreasonable. U.S. Const. Amend. IV; *Katz v. United States*, 389 U.S. 347, 357 (1967). However, there are some exceptions

to this principle. One of those exceptions is the emergency aid exception.

The seminal state appellate case related to the emergency aid exception to the Fourth Amendment was decided almost thirty years ago. *People v. Mitchell*, 347 N.E.2d 607 (N.Y. Ct. App. 1976). In this case, the state court discussed and applied the emergency aid exception to the Fourth Amendment. The Court announced certain requirements in this exception's application. These are: (1) law enforcement must have reasonable grounds to believe there is an emergency which needs their immediate assistance to protect life or liberty; (2) any search under this exception must not be primarily motivated by an intent to arrest a person or seize evidence; and (3) there has to be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *Id.* at 609 (citations omitted). A reading of *Mitchell* shows that this is an objective standard. *Id.* at 609-10. *See also*, Wayne R. LaFave, 3 *Search & Seizure* §6.6(a) (4th ed. 2005).

This Court has itself implicitly approved *Mitchell*. *Mincey v. Arizona*, 437 U.S. 385 (1978). The Court noted that a search under the emergency aid exception to the Fourth Amendment may be allowed to protect or preserve life or avoid serious injury. *Id.* at 392. A number of courts since *Mitchell* and *Mincey* have addressed the emergency aid exception to the Fourth Amendment, and applied the *Mitchell* standards in an objective manner. *Strange v. City of Tuscaloosa*, 652 So.2d 773, 776 (Ala. Ct. App. 1994); *In re Sealed Case 96-3167*, 153 F.3d 759, 766 (D. D.C. 1998); *People v. Hebert*, 46 P.3d 473, 480 (Colo. 2002); *Gallmeyer v. State*, 640 P.2d 837, 842 (Alaska Ct. App. 1982); *State v. Macelman*, 834 A.2d 322, 326 (N.H. 2003); and *State v.*

Yoder, 938 P.2d 534, 540 (Utah Ct. App. 1997). While the sixteen jurisdictions cited by counsel on both sides of this issue is not exhaustive, it is clear that courts apply an objective standard to the *Mitchell* guidelines. As such, there is no conflict or question left unanswered concerning the objective standards applied by courts throughout the country.

II. While courts may have a different view concerning the gravity of the emergency or exigency necessary to justify a warrantless search, the difference does not rise to the level requiring a decision by this Court

There are many cases which demonstrate the level of gravity which is necessary in applying the emergency aid exception to the Fourth Amendment. *See generally*, LaFave at §6.6(a). *See also*, *Turner v. State*, 645 So.2d 444, 447 (Fla. 1994) (a suicide attempt in the presence of law enforcement); *United States v. Presler*, 610 F.2d 1206, 1211 (4th Cir. 1979) (seeking a missing residential occupant); and *United States v. Goldenstein*, 456 F.2d 1006, 1010 (8th Cir. 1972) (seeking a person known to suffer from a gunshot). A key determination concerning the gravity of the situation is whether "[t]here are exigent circumstances in which police action literally must be now or never to preserve the evidence of the crime . . . " *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973); *United States v. Turner*, 650 F.2d 526, 527 (4th Cir. 1981) (noting the degree of urgency is a factor that must be considered). Issues related to the gravity of a situation leading to the application of the emergency aid exception to the Fourth Amendment are fact specific, and appellate courts should be reluctant to overturn those determinations. *Minnesota v. Olson*, 495

U.S. 91, 100-01 (1990); *United States v. Thomas*, 372 F.3d 1173, 1177 (10th Cir. 2004). These types of cases usually involve felonies, and not misdemeanor offenses. However, courts are not silent on misdemeanor offenses.

Misdemeanor offenses are of not such a serious nature to disregard the requirements to exercise the emergency aid exception to the Fourth Amendment. *State v. Santiago*, 619 A.2d 1132, 1134 (Conn. 1993); *People v. Reinhardt*, 366 N.W.2d 245, 248 (Mich. Ct. App. 1985); *King v. City of Ft. Wayne, Ind.*, 590 F.Supp. 414, 422 (N.D. Ind. 1984); *State v. Lee*, 457 N.E.2d 377, 379-80 (Ohio 1983); and *Prather v. State*, 182 So. 2d 273, 276 (Fla. 1966).

In the matter before this Court, the offenses were misdemeanors. They were not the type of misdemeanor offenses claimed by the Petitioner to show a lack of direction by courts in determining the level of gravity which is necessary to exercise the emergency aid exception to the Fourth Amendment. A review of the record by the Utah Supreme Court shows the circumstances were not severe enough to warrant the application of the emergency aid exception to the Fourth Amendment. *Brigham City v. Stuart*, No. 20021004, 2005 WL 387966 at *26 (Utah Feb. 18, 2005). The police officers did not give medical aide to anybody in the home, but instead only acted in their law enforcement capacity and instituted arrests. The altercation was a minor one. *Id.* It did not begin to rise to the levels noted in *Turner*, *Presler*, or *Goldenstein*. Lastly, as the Utah Supreme Court notes, "[t]he circumstances known to the officers at the time of entry did not create a reasonable belief that emergency aid was required." *Id.* at *27.

There is no deep and intractable conflict looking for any type of resolution on this issue. The cases show well-established guidance for law enforcement and the courts in determining the gravity of a situation in making an emergency aid exception to the Fourth Amendment. This guidance appropriately balances the needs of law enforcement with the Fourth Amendment protections.

III. The officers' disregard of the Fourth Amendment for a non-emergency situation was unreasonable

It is well-established principle that citizens have a heightened sense of privacy in their homes. *Yoder*, 935 P.2d at 540 (citation omitted). As discussed *supra*, the *Mitchell* standard governs the present matter. In the matter before the Court the officers were able to tell there was no immediate threat that would justify an entrance into the home with its accompanying heightened sense of privacy. They did not make any attempt to gain the occupant's attention. Nor are there the serious circumstances discussed in *Turner*, *Presler*, or *Goldenstein*. Based on the minimal altercation, and applying the Fourth Amendment protections to the present matter, the entry of the officers was unreasonably intrusive.

CONCLUSION

While the State of Utah may not agree, the law is well settled on the issue of using the emergency aid exception to the Fourth Amendment to gain entry into a home. This is a high standard, which has not been met in this case.

There was no emergency that warranted such an entry for a misdemeanor offense.

Nor are the courts sufficiently divided to warrant a decision from this Court. The emergency aid doctrine is well established and gives law enforcement the ability to perform their necessary duties without infringing on the Fourth Amendment protections.

Based on the above and foregoing, the City's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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REPLY BRIEF FOR BRIGHAM CITY

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REPLY BRIEF FOR BRIGHAM CITY

The Utah Supreme Court decided a question that this Court left unresolved in *Mincey v. Arizona*, 437 U.S. 385 (1978): the standard by which emergency aid entries should be judged. Courts are deeply divided on this issue. Some strictly adhere to the objective standard traditionally applied in Fourth Amendment cases. Others, including the Utah Supreme Court, apply a test that also examines the officer's subjective motivations for taking action. Others apply a test that is ambiguous on the issue. This Court should definitively resolve the issue now because, contrary to respondents' contentions, the inquiry into an officer's actual motivations for taking action is fundamentally at odds with this Court's Fourth Amendment jurisprudence.

The Utah Supreme Court also confronted an issue that has vexed lower courts since this Court's decision in *Welsh v. Wisconsin*, 466 U.S. 740 (1984): how serious must the harm or wrongdoing be to justify a warrantless entry? Because police frequently encounter ongoing violence in a home when responding to disturbances, this Court should resolve the confusion.

1. The *Mitchell* Analysis Employs a Subjective Test That Squarely Conflicts With This Court's Fourth Amendment Jurisprudence.

Respondents incorrectly assert that the three-part test adopted by the Utah Supreme Court, and first articulated in *People v. Mitchell*, 347 N.E.2d 607 (N.Y. 1976), "is an objective standard." Brf. in Opp. at 2. It is true that under part one of the test, an officer's actions must be objectively reasonable. Pet. App. at 12; *accord Mitchell*, 347 N.E.2d at 609. The City has not argued otherwise. But even if an

officer's action is objectively reasonable, the exception does not apply unless the government shows that the officer's "search [was] not primarily motivated by intent to arrest and seize evidence" (part two). Pet. App. at 12; *accord Mitchell*, 347 N.E.2d at 609. By its plain terms, this is a subjective test that requires an examination of an officer's actual motivations for taking action.

Respondents incorrectly assert that *Mincey* "implicitly approved *Mitchell*." Brf. in Opp. at 2. *Mincey* cited *Mitchell* and other cases as recognizing an emergency aid exception. 437 U.S. at 392-93 & n.6. But contrary to respondents' claim, *Mincey* did not implicitly approve *Mitchell's* holding. To the contrary, the Court expressly stated that by citing *Mitchell* and the other cases, it "d[id] not mean to approve the specific holding of each case." 537 U.S. at 393 n.6.

Indeed, *Mitchell's* inquiry into an officer's motivation squarely conflicts with this Court's Fourth Amendment jurisprudence. This Court has "never held, outside the context of inventory search or administrative inspection . . . , that an officer's motive invalidates objectively reasonable behavior under the Fourth Amendment; but [the Court] ha[s] repeatedly held and asserted the contrary." *Whren v. United States*, 517 U.S. 806, 812 (1996). As aptly noted by the *amici*, Brf. of Amici at 5-6, the Court reaffirmed this principle in *Devenpeck v. Alford*, 543 U.S. 146, 125 S.Ct. 588, 593-94 (2004).

Respondents claim that no conflict exists. Brf. in Opp. at 3. Yet, as noted in the City's petition, both state courts and federal courts are split on whether officer motivation is relevant to the analysis. *See* Pet. at 8-11. Other courts have failed to identify a clear standard. For example, five

circuit courts of appeal recognize an emergency aid exception, but articulate a standard that is ambiguous on the issue. They recognize an emergency exception if police "reasonably believe" an emergency exists or if police have an "objectively reasonable belief" an emergency exists. *See United States v. Martins*, 413 F.3d 139, 147 (1st Cir. 2005); *United States v. Holloway*, 290 F.3d 1331, 1337 (11th Cir. 2002); *Tierney v. Davidson*, 133 F.3d 189, 196-97 (2nd Cir. 1998); *Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1244-45 (7th Cir. 1994); *United States v. Moss*, 963 F.2d 673, 678 (4th Cir. 1982). The language that the exception applies if an officer possesses a reasonable belief of an emergency suggests that an officer's state of mind plays a role under the test. However, the courts' analyses make such a conclusion far from clear. *See Martins*, 413 F.3d at 147 (examining the facts confronting the officer without regard to the officer's motivations); *Holloway*, 290 F.3d at 1337-38 (observing that an officer's motivation in rendering aid is different than when searching for evidence, but suggesting that the same objective probable cause standard applies); *Tierney*, 133 F.3d at 196-98 (citing an objective standard but examining officer's purpose for entry); *Sheik-Abdi*, 37 F.3d at 1244-45 (concluding that emergency entries may not be used as a pretext to effect an in-home arrest, but looking to objective facts, not officer motivation, in determining whether search was pretextual); *Moss*, 963 F.2d at 678 (determining whether officer's entry was a pretext based on scope of action).

In sum, *Mincey* recognized that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" 437 U.S. at 392-93 (citation omitted). But it left unresolved the standard by which such entries should be judged. This Court should resolve the conflict and confusion that has arisen in the ensuing 27 years.

2. The Acknowledged Differences Among the Courts Regarding the Gravity of Harm or Wrongdoing Necessary to Justify a Warrantless Entry Should Not Be Tolerated.

Respondents acknowledge that "courts may have a different view concerning the gravity of the emergency or exigency necessary to justify a warrantless search," but they seek to downplay this confusion by saying that the "[i]ssues related to the gravity of the situation . . . are fact specific, and appellate courts should be reluctant to overturn those determinations." Brf. in Opp. at 3.

As in all Fourth Amendment cases, the Utah Supreme Court's decision ultimately turned on the specific facts of the case. But the Utah court did not treat its decision as limited to a narrow set of facts. It held that emergency aid entries may not be made unless the officer reasonably believes "'that an unconscious, semi-conscious, or missing person feared injured or dead' is in the home." Pet. App. at 13 (citation omitted). It further held that "exigent circumstance" entries must be based on an offense more serious than a misdemeanor assault. *See* Pet. App. at 15-19. As noted in the City's petition, this demarcation highlights the existing confusion among lower courts in their assessment of the gravity of harm or wrongdoing that will justify a warrantless entry. Pet. 11-14.[1]

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[1] This Court's decision in *Illinois v. McArthur*, 531 U.S. 326 (2001), could be read as deciding the issue in favor of permitting warrantless action by police where the crime involved is any "jailable" offense. However, because police did not enter McArthur's home, but simply prevented him from going in while police secured a warrant, the issue of whether an *entry* by police is permissible for any jailable offense has not been decided.

The Utah Supreme Court's decision also highlights the existing "uncertain[ty] [as to] whether the circumstances that may give rise to 'emergencies' are less [or in this case, more] circumscribed than those that constitute 'exigent circumstances.'" *Sheik-Abdi*, 37 F.3d at 1244-45.

As noted by the sixteen amici states and three amici counties, "police responding to disturbance calls regularly confront incidents of violence in the premises" of a home. Brf. of Amici at 2. It is imperative that officers be guided by a uniform and rational standard. This Court should end the uncertainty.

CONCLUSION

For the reasons stated above and in the petition for a writ of certiorari, the petition should be granted.

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